

Indiana Department of Education

Division of Special Education

### **COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	1800.01
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	September 12, 2001
DATE OF REPORT:	October 11, 2001
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	November 26, 2001

### **COMPLAINT ISSUES:**

Whether the Warsaw Community Schools and the North Central Indiana Special Education Cooperative violated:

511 IAC 7-27-3(a)(4) and 511 IAC 7-27-4(c) with regard to the school's alleged failure to ensure that the case conference committee (CCC) developed the student's individualized education program (IEP) and determined placement in the least restrictive environment as a group, instead of unilaterally determining a number of IEP components and placement in the least restrictive environment.

511 IAC 7-23-1(p) and (q) with regard to the school's alleged disclosure of personally identifiable information about a student with a disability to an unauthorized individual.

511 IAC 7-23-1(d) with regard to the school's alleged failure to provide the parent with access to the student's complete educational record upon the parent's request.

511 IAC 7-27-3(a)(3) with regard to the school's alleged failure to include a general education teacher in the CCC meeting for the student at the May 17, 2001, CCC meeting.

511 IAC 7-25-7(b) with regard to the school's alleged failure to conduct an additional evaluation and convene the CCC within sixty instructional days from the date of the parent's written consent.

511 IAC 7-27-9(b) with regard to the school's alleged failure to make available to a student with a disability the variety of educational programs and services it makes available to students without disabilities.

511 IAC 7-17-72(3) with regard to the school's alleged failure to ensure the student's teacher of record (TOR) regularly monitored the implementation of the student's IEP and provided progress reports to the parent.

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's IEP as written, specifically, failing to provide the parent with progress reports as described in the student's IEP.

511 IAC 7-17-8 with regard to the school's alleged failure to ensure that a functional behavioral assessment was completed prior to developing a behavioral intervention plan.

During the course of the investigation, an additional issue was identified, which is:

511 IAC 7-24-1(b)(1) and (3) with regard to the school's alleged failure to assign an educational surrogate parent when no parent, as defined in 511 IAC 7-17-57, can be identified, and when the student is a ward of the state under the laws of the state.

## **FINDINGS OF FACT:**

The student is sixteen years old, attends the ninth grade, and has been determined eligible for special education due to a mild mental disability. The student is a ward of the state and has been living with her current foster parents since August 2000.

The school has never appointed any individual(s) as the student's educational surrogate parent(s). The foster mother reports that the student's biological mother's parental rights were terminated when the student was approximately six years of age. She reports the biological father's parental rights were terminated during the month of November 2000. The director and foster mother report that the foster parents have never been appointed by the school and have not received training to become the student's educational surrogate parents. The school does not have any documentation on file to verify the information reported by the foster mother concerning the termination of parental rights; however, at CCC meetings the student's placement worker has verified the information reported by the foster mother. The foster mother reports she and her husband will participate in an educational surrogate parent training program on October 30, 2001. The school has offered to appoint the foster parents as educational surrogate parents for the student, and the foster parents have agreed to serve in this capacity.

The parent advocate alleges that some sections of the IEP dated May 17, 2001, were completed prior to convening the CCC meeting, and therefore, the foster father was not permitted input on these IEP items at the CCC meeting convened on May 17<sup>th</sup>. Several pages in the IEP reflect that the foster father had input at the CCC meeting. The foster father also signed and dated the IEP on May 17, 2001, indicating that he agreed with the recommendations made and gave consent for the IEP to be implemented.

The parent advocate reports the foster parents visited the student's school on August 13, 2001, with the purpose of obtaining a copy of the student's educational record. Upon review of the educational record, the foster parents observed that the file did not contain a copy of the May 17, 2001, IEP, an educational evaluation, and a progress report. The director states these documents were stored over the summer in a locked file cabinet, in a locked office, which is inside a classroom that was assigned to the student's TOR during the 2000-2001 school year. The director states the student's TOR from last school year had kept these documents in her file cabinet to make copies for the student's 2001-2002 TOR, and had neglected to get them filed back into the student's cumulative folder. The director reports at no time were these documents left unattended to be accessed by unauthorized individuals. The director states these documents are not missing and were filed in the student's cumulative folder on August 20, 2001.

On August 15, 2001, the foster parents signed a school form entitled "Request for Child's School File." The form indicated the foster parents would like a complete copy of the student's educational record. The following notation is written at the bottom of the form: "Gave to [foster parent's name] on 8-15-01." The director states she also offered to copy any part of the student's educational

record for the foster parents on August 16, 2001.

At the CCC meeting convened on May 17, 2001, the CCC determined that the student should receive instruction in the general education classroom for part of the school day. A general education teacher did not attend the CCC meeting. The director acknowledges that a general education teacher should have been present at the May 17<sup>th</sup> meeting.

The foster parent provided the school with written consent to complete an educational evaluation for the student on February 19, 2001. A CCC meeting to discuss the results of the evaluation was convened on May 17, 2001. According to the school calendar for the 2000-2001 school year, the evaluation was conducted and a CCC meeting was convened within 58 instructional days from the date the foster parent provided the school with written consent.

The foster parents contend that the student was denied access to a variety of educational programs and services during the 2000-2001 school year because the student had been identified as having a mild mental disability, but was placed in a classroom for students identified as having moderate and severe mental disabilities. However, during the 2000-2001 school year the student was not identified as having a mild mental disability, but had been determined by the CCC to have a moderate mental disability. Two IEPs were developed for the student for the 2000-2001 school year. These IEPs are dated September 5 and November 6, 2000. Both IEPs list the student's disability as a moderate mental disability. In addition, both IEPs indicate that the student shall participate in special education instruction for the entire instructional day. The director reports the student received and participated in the special education programming determined appropriate by the CCC. A CCC meeting was convened on May 17, 2001, to develop an IEP for the student for the 2001-2002 school year. At this CCC meeting the student's primary disability was changed from a moderate mental disability to a mild mental disability. In addition, it was determined that the student would participate in the general education environment during the 2001-2002 school year.

During the 2000-2001 school year the student only participated in special education instruction. The student's TOR for the 2000-2001 school year provided to the Division five pages of documentation to demonstrate how she ensured that the student's IEP was implemented as specified. The TOR provided a three page log of the student's activities and participation in the school-based work program used to assess the student's performance. In a two page summary, the TOR listed nine methods she utilized during the school year to monitor the student's progress made towards achieving IEP goals and objectives. The TOR reports in her written response that she frequently informed the foster father of the student's academic progress. She reports these contacts took place in person and by telephone. The student's IEP for the 2000-2001 school year reflects that the school will provide the foster parents with copies of the annual goal forms every nine weeks indicating the student's progress made toward achieving the annual goals. The director reports the school has no documentation to verify that the foster parents were provided with progress reports as specified in the student's IEP.

The foster parents state that school personnel failed to complete a Functional Behavioral Assessment prior to developing a Behavioral Intervention Plan (BIP) for the student. The director provided to the Division a copy of a three page form entitled "Functional Assessment/Behavior Intervention Worksheets" that was completed by school personnel on August 23, 2001. From the worksheets school personnel developed a proposed Behavior Intervention Plan dated August 23, 2001, that was discussed at a CCC meeting convened on August 24, 2001. The August 24<sup>th</sup> Case Conference Summary reflects that the TOR reviewed the proposed behavior plan with the CCC

participants. Subsequent to the August 24<sup>th</sup> meeting, the foster parents have expressed a need to obtain information from the student's private counselor prior to approving the existing BIP. The director reports that once the counselor's input is obtained, school personnel will finish reviewing the Functional Behavioral Assessment with the foster parents, and then revise the BIP, if necessary.

## **CONCLUSIONS:**

Finding of Fact #2 reflects that the school failed to assign an educational surrogate parent when no parent, as defined in 511 IAC 7-17-57, can be identified, and when the student is a ward of the state under the laws of the state. Therefore, a violation of 511 IAC 7-24-1(b)(1) and (3) is found. However, Findings of Fact #2, #3, #4, #5, and #7 demonstrate that school personnel, by their actions, acknowledged the foster parents as the student's parents for special education purposes.

School personnel are permitted to prepare recommendations for IEP content and placement prior to the actual CCC meeting and present those recommendations at the CCC meeting. However, the CCC makes the final determination regarding IEP contents and a student's placement. Finding of Fact #3 reflects that the CCC convened on May 17, 2001, in which the foster father participated, determined the contents of the Student's IEP. The foster father provided written agreement with and consent to implementation of the IEP. Therefore, no violations of 511 IAC 7-27-3(a)(4) and 511 IAC 7-27-4(c) are found.

Finding of Fact #4 indicates that due to an oversight three documents pertaining to the student were maintained in the TOR's locked files over the summer of 2001, rather than with the rest of the Student's educational record. Although not maintained with the main educational record over the summer, the records were not disclosed to unauthorized individuals and have been consolidated with the Student's cumulative educational record. Therefore, no violation of IAC 511 7-23-1(p) or (q) is found.

Findings of Fact #4 and #5 reflect that the foster parents were given a copy of the student's educational record on August 15, 2001, two days after the request was made. Therefore, no violation of 511 IAC 7-23-1(d) is found.

Finding of Fact #6 indicates that a general education teacher should have been in attendance at the CCC meeting convened on May 17, 2001, but did not attend. Therefore, a violation of 511 IAC 7-27-3(a)(3) is found.

Finding of Fact #7 reflects that the school conducted an educational evaluation and convened a CCC meeting to discuss the results of the evaluation within 58 instructional days from the date the school received written consent from the foster parent. Therefore, no violation of 511 IAC 7-25-7(b) is found.

Finding of Fact #8 indicates that the school made available to the student the variety of educational programs and services it makes available to students without disabilities. Therefore, no violation of 511 IAC 7-27-9(b) is found.

Finding of Fact #9 reflects that, although the student's TOR regularly monitored the implementation of the student's IEP, the school had no documentation available to verify that progress reports were provided to the foster parents as specified in the student's IEP. Therefore, violations of 511 IAC 7-

17-72-(3) and 511 IAC 7-27-7(a) are found.

Finding of Fact #10 indicates that a Functional Behavior Assessment was completed by school personnel prior to developing a proposed BIP for the CCC's review. Therefore, no violation of 511 IAC 7-17-8 is found.

**The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The Warsaw Community Schools and the North Central Indiana Special Education Cooperative shall:

1. Inservice all appropriate school personnel as to the requirements specified in 511 IAC 7-17-72(3), 511 IAC 7-24-1(b)(1) and (3), 511 IAC 7-27-3(a)(3), and 511 IAC 7-27-7(a). Submit documentation to the Division that all inservice training has been completed no later than November 16, 2001. The documentation should include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.
2. Submit a letter of assurance to the Division no later than November 16, 2001, that ensures a general education teacher will attend all CCC meetings when the student is or may be participating in the general education environment. The letter of assurance shall include a statement that indicates progress reports will be provided to the foster parents as specified in the student's IEP.
3. Submit documentation to the Division no later than November 16, 2001, that verifies the school has appointed an educational surrogate parent for the student. The documentation shall include verification that the educational surrogate parent has received appropriate training to serve in this capacity.

DATE REPORT COMPLETED: October 11, 2001